

State of California



Fair Political Practices Commission

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322-6441

June 19, 1984

Douglas J. Maloney
County Counsel of Marin County
Civic Center, Suite 342
San Rafael, CA 94903

Re: Your Request for Advice
Our No. A-84-130

Dear Mr. Maloney:

You have written requesting advice on behalf of Marin County Supervisor Robert Roumiguere. Supervisor Roumiguere wishes to avoid any potential disqualification requirements as a result of disposition of land which he owns in Marin County.

FACTS

Supervisor Roumiguere owns a parcel in Marin County. In the past a land developer in Marin County has offered to purchase this parcel. However, the supervisor has refused such a sale because it could result in the need for him to disqualify himself from decisions affecting the developer who would then be a source of income to him.^{1/}

Supervisor Roumiguere has a vineyard in Lake County. He desires to acquire an adjacent parcel for his winery. The owner of the Lake County parcel wishes to sell his property, which is of approximately equal value to the supervisor's Marin property. Supervisor Roumiguere would like to exchange his Marin Property for the Lake County property. However, the Lake County property owner will do so only upon the contingency that

^{1/} If the sale was for cash, the disqualification period would run for 12 months. If the sale involved a mortgage it would continue for a longer period. Government Code Section 87103(c).

the Marin property is sold "immediately" (within a time certain; i.e., 60 days). If the sale is not forthcoming within that time, then the properties would revert to their initial owners and the exchange would be nullified. Obviously, the supervisor could then elect to purchase the Lake County property outright, but he would prefer the exchange.

QUESTION

You have asked whether, under these circumstances, the developer will be considered a source of income to Supervisor Roumiguere if the developer purchases the Marin property from the Lake County owner in the event of an exchange such as that described above. Although the supervisor is aware of the developer's interest in purchasing the property, he has not arranged for the developer to purchase the property from the Lake County owner and, to the supervisor's knowledge, the developer has not communicated an interest to the Lake County owner.

CONCLUSION

Our Advice is that, under these circumstances, the developer would constitute a source of income to Supervisor Roumiguere.

ANALYSIS

Because the exchange is contingent upon an "immediate" sale of the Marin property and the exchange will be nullified if the sale does not materialize, and because Supervisor Roumiguere is aware that the developer is interested in purchasing the Marin property, we would consider the exchange and the "subsequent" sale of the Marin property to the developer to be part of the same transaction.^{2/} Under these circumstances, Supervisor Roumiguere's ultimate success and satisfaction in the exchange transaction would be dependent upon the actions of the developer in purchasing the Marin property, as well as the actions of the Lake County property owner. Consequently, the purchaser of the Marin property will be considered jointly with the Lake County

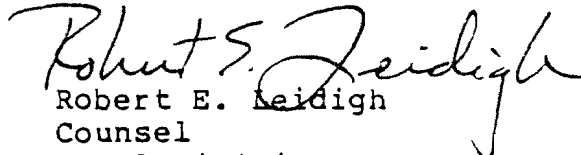
^{2/} Presumably, the transaction would be accomplished via an escrow arrangement which would not close until the Marin property was sold. Escrow would be open for a set period of time to accomplish the sale and then it would close when the sale occurred.

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property owner, to be a source of income to the supervisor.
(See our recent advice letter to Jack Katz, No. A-84-112, copy enclosed.)

If you have any questions regarding the advice contained in this letter, please do not hesitate to contact me at (916) 322-5901.

Sincerely,


Robert E. Zeidigh
Counsel
Legal Division

REL:plh
Enclosure

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May 18, 1984

Ms. Barbara Milman, Esq.
General Counsel
Fair Political Practices Commission
1100 K Street
P. O. Box 807
Sacramento, Ca. 95814

Dear Ms. Milman:

I request your written opinion on the following facts:

1. Marin County Supervisor Robert Roumiguere owns a lot in Marin County which has a value of \$125,000.00.
2. He desires to acquire a property in Lake County which has about the same value.
3. The owner of the Lake County property is willing to exchange his property in Lake for Supervisor Roumiguere's property in Marin, provided that the Lake County owner can sell the Marin property immediately.
4. A land developer in Marin County has previously offered to purchase Supervisor Roumiguere's property, but Supervisor Roumiguere has been unwilling to sell it to him inasmuch as the proceeds of the sale and/or any mortgage would constitute a "source of income" under Government Code Section 87103, and he would thus be unable to vote on an important land use project this developer proposes.

My questions are: If, under these circumstances, Supervisor Roumiguere exchanges his Marin property for the Lake property, and the Marin property is subsequently purchased by this Marin land developer, will Supervisor Roumiguere:

(a) be required to list the Marin developer as a source of income?


(b) be unable to vote on the Marin developer's land use proposal if it comes before the Board of Supervisors for approval within twelve months.

Ms. Barbara Milman, Esq.
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If you desire additional information or wish to meet and discuss the matter, I will be pleased to be of assistance.

Your prompt consideration of this request will be greatly appreciated.

Very truly yours,



DOUGLAS J. MALONEY
County Counsel

DJM:sl

cc: Supervisor Roumiguere